

GUSTAVO CHAVEZ,)	No. C 10-02688 EJD (PR)
)	
Plaintiff,)	ORDER ADDRESSING DISCOVERY
)	MOTIONS; DENYING MOTION FOR
vs.)	TEMPORARY RESTRAINING
)	ORDER; DENYING MOTION TO
)	AMEND COMPLAINT
FRASIER, et al.,)	
)	
Defendants.)	
)	(Docket Nos.30, 31, 32, 33, 34, 38, 39,
)	40 & 42)

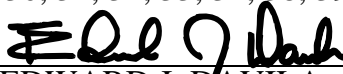
Plaintiff has filed a motion to file an amended complaint to add two defendants

to this action: Defendants C. Acosta, and Greg Steward. (Docket No. 38.) Plaintiff alleges that these two defendants “either took part in the attack or stood by and watched the other defendants attack plaintiff.” (Mot. at 2-3.) Defendants filed an opposition to the motion to amend, arguing that Plaintiff failed to attach his entire proposed amended pleadings. (Oppo. at 2; Docket No. 41.) In the interest of justice, the Court will construe the motion as a motion to file a supplemental pleading. Defendants also contend that Plaintiff fails to provide any basis for his allegation that the proposed defendants used excessive force and that the amended complaint fails on the merits. (*Id.* at 3.)

The Court dismissed all claims except the excessive force claim from the complaint in accordance with Plaintiff’s wishes, and dismissed the irrelevant defendants from the action, including C. Acosta. (*See* Docket No. 6.) Plaintiff’s new allegations against Acosta and Greg Stewart are based on the incident reports prepared by the proposed defendants in connection with the incident of excessive force. (Mot. Exhs. 1 & 2.) Plaintiff claims that Acosta and Stewart made false statements in their respective reports. The incident reports indicate that neither of these proposed defendants participated in the alleged excessive force: Acosta arrived after the incident and observed that Plaintiff was bleeding (Ex. 1); and Stewart strictly observed the incident where Plaintiff appeared to be resisting the escorting officers. The submitted exhibits do not show that these two proposed defendants either participated in or idly stood by while Plaintiff was allegedly being attacked without provocation. Plaintiff’s allegations that they made false statements in the incident reports are nothing more than speculative and conclusory without supporting evidence, and fail to state a claim of excessive force against them. Accordingly, Plaintiff’s motion to file an amended complaint is DENIED.

This order terminates Docket Nos. 30, 31, 32, 33, 34, 38, 39, 40 and 42.

DATED: August 19, 2011


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GUSTAVO CHAVEZ,
Plaintiff,

Case Number: CV10-02688 EJD

CERTIFICATE OF SERVICE

v.

FRASIER, et al.,
Defendants.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 8/19/2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gustavo Chavez E 45117
Pelican Bay State Prison
P. O. Box 7500
Crescent City, CA 95532

Dated: 8/19/2011

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk